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Blake A. Field VS Google, Inc. Doc. 30

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, vs. GOOGLE INC., Defendant.	No. CV-S-04-0413-RCJ-LRL
AND RELATED COUNTERCLAIMS	**DEFENDANT'S REPLY BRIEF IN SUPPORT OF MOTION TO EXTEND DISCOVERY**

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I. INTRODUCTION

Plaintiff and Defendant agreed to extend the date required for expert disclosures in light of other modifications to the discovery scheduling, including the timing of depositions.[1] Plaintiff subsequently ***reneged*** on this agreement and Defendant filed the present motion to extend the deadlines to allow Defendant's expert – Dr. John R. Levine – sufficient time to consider all of the evidence prior to filing his report.

However, in light of the pending deadline for expert reports, Dr. Levine completed an expert report in a short time frame based on the available evidence. Defendant designated Dr. Levine, and served a copy of his expert report, under the existing schedule. Plaintiff did not designate an expert and neither party has designated rebuttal experts.

Defendant's motion – predicated on the need for additional time for Dr. Levine to complete his expert report in light of the fact that discovery was still pending – is now moot. Defendant withdraws its request to extend the discovery deadlines. However, Defendant reserves the right to provide a supplemental report from Dr. Levine based on the deposition of Plaintiff Field, which was completed on June 9, 2005.[2]

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[1] Plaintiff asserts – without evidentiary support – that he initially "agreed ***to consider***" extending the time frame for expert designations. *See* Plaintiff's Opposition at 1-2 (emphasis added). In fact, Plaintiff ***agreed*** to extend the time frame for expert designations, and later reneged on this agreement. *See* Kavanaugh Decl. ¶ 4.

[2] Plaintiff asserts, incorrectly, that Plaintiff's deposition could not be relevant to Dr. Levine's report, speculating that Dr. Levine's report would be limited to the Digital Millennium Copyright Act ("DMCA"). In fact, Dr. Levine's report is not limited to the DMCA and Dr. Levine should be entitled to consider all of the evidence. Moreover, the DMCA includes a number of considerations that relate to Plaintiff including, for example, whether Plaintiff established rules concerning the "refreshing, reloading, or other updating of information," whether Plaintiff utilized technology which returns information to the Plaintiff when a Web page is accessed, whether Plaintiff limits access to the material, and whether Plaintiff has adopted standard technical measures as defined by the statute. *See* 17 U.S.C. §§ 512(b)(2)(B), (C), (D), and 512(i)(2). As such, Plaintiff's deposition testimony is relevant to the DMCA and Dr. Levine should be allowed to consider such evidence in rendering his opinion.

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II. CONCLUSION

For the foregoing reasons, Google withdraws its requests that this Court grant an extension to the existing discovery schedule.

Dated: June 14, 2005

SNELL & WILMER L.L.P.

By: ______________________

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing **DEFENDANT'S REPLY BRIEF IN SUPPORT OF MOTION TO EXTEND DISCOVERY** was served this 14 day of June, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

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